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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION AT LOS ANGELES**

INTERDIGITAL, INC., INTERDIGITAL  
VC HOLDINGS, INC., INTERDIGITAL  
MADISON PATENT HOLDINGS, SAS,  
AND INTERDIGITAL CE PATENT  
HOLDINGS, SAS,

Plaintiffs,

v.

THE WALT DISNEY COMPANY, DISNEY  
MEDIA AND ENTERTAINMENT  
DISTRIBUTION LLC, DISNEY DTC LLC,  
DISNEY STREAMING SERVICES LLC,  
DISNEY ENTERTAINMENT & SPORTS  
LLC, DISNEY PLATFORM  
DISTRIBUTION, INC., BAMTECH, LLC,  
HULU, LLC, AND ESPN, INC.,

Defendants.

Case No. 2:25-cv-00895-WLH-BFM

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTION FOR  
A PRELIMINARY  
INJUNCTION RELATED TO  
INTERDIGITAL'S REQUEST  
FOR INJUNCTION IN BRAZIL**

Judge: Hon. Wesley L. Hsu  
Hearing Date: May 30, 2025, 1:30  
pm  
Courtroom: 9B

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2 361 F.3d 11 (1st Cir. 2004)..... 16

3 *Santa Monica Nativity Scenes Comm. v. City of Santa Monica,*  
4 784 F.3d 1286 (9th Cir. 2015) ..... 10

5 *Telefonaktiebolaget LM Ericsson v. Lenovo (United States), Inc.,*  
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7 *Voda v. Cordis,*  
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9 *Winter v. NRDC,*  
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16 Fed. R. Civ. P. 12(b)(6) ..... 10

17 Thomas Wiegand et al, *Overview of the H.264/AVC Video Coding Standards,*  
18 Vol. 13, No. 7 (July 2003), *available at:*  
19 [http://ip.hhi.de/imagecom\\_G1/assets/pdfs/csvt\\_overview\\_0305.pdf](http://ip.hhi.de/imagecom_G1/assets/pdfs/csvt_overview_0305.pdf) ..... 5

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1 **I. INTRODUCTION**

2 Disney asks this Court for the extraordinary remedy of blocking Brazil from  
3 administering its own court system based on patent rights in Brazil, because Disney is  
4 concerned it *might* lose on the merits in Brazil. Worse still, Disney makes its  
5 extraordinary request on a false premise: that the case before this Court has control  
6 over, or will be dispositive of, the case about Brazilian patents proceeding lawfully in  
7 Brazil. It does not. There is no basis for this drastic ask, and Disney cannot carry its  
8 heavy burden for the injunctive relief it seeks.

9 Patent rights are, by definition, territorial. Basic tenets of international  
10 sovereignty and comity protect this principle. This Court, alone, is vested with the  
11 authority to decide whether Disney infringes the asserted U.S. Patents and what the  
12 appropriate remedies are. *See* 35 U.S.C. § 100 *et seq.* Likewise, Brazilian courts—and  
13 Brazilian courts alone—are vested with the authority to decide whether Disney  
14 infringes Brazilian patents and what the appropriate remedies are in Brazil.

15 Despite these well-established principles, Disney is asking this Court to police  
16 the Brazilian judicial process. Disney wants this Court to issue an injunction so that *if*  
17 a Brazilian court finds that Disney is infringing Brazilian patents, InterDigital would  
18 be precluded from pursuing the legally prescribed remedies for that infringement. But  
19 just as it would not be appropriate for a Brazilian court to interfere with parallel  
20 proceedings before this Court, a U.S. Court should not—absent extraordinary  
21 circumstances not present here—interfere with lawful foreign proceedings.

22 Disney offers a single justification in asking this Court to overlook these  
23 fundamental principles—its alleged breach of RAND contract counterclaims that  
24 InterDigital has moved to dismiss. Yet, Disney admits that the Brazilian patent claims  
25 ***are not essential and are therefore not RAND-encumbered*** because every asserted  
26 claim relates only to encoding, a subject not specified or mandated by the H.264 and  
27 H.265 standards. Because Disney admits that RAND-encumbered patent claims are  
28 not at issue in Brazil, ***there can be no breach of any contractual RAND commitment***

1 in Brazil. Disney's RAND counterclaims here—even if they are permitted to  
2 proceed—are irrelevant to the Brazilian action. If InterDigital's motion to dismiss is  
3 granted, as it should be, this Court can and should summarily deny Disney's request  
4 for an antisuit injunction as moot.

5 Beyond this predicate deficiency to Disney's motion, there are at least three  
6 additional independent reasons to deny Disney's requested antisuit injunction. Each of  
7 these reasons, alone, is enough to deny Disney's request.

8 **First**, an antisuit injunction may be appropriate only if this case is dispositive of  
9 the foreign proceeding. But the case before this Court, even if Disney's defective  
10 counterclaims are not dismissed, is *not* dispositive of the case before the Brazilian  
11 court. In fact, as Disney concedes in Brazil, the asserted Brazilian patent claims are  
12 not essential to the standard—as they must be to trigger any contractual RAND  
13 commitment. Disney's RAND counterclaims here, even if not dismissed, are not  
14 dispositive to the Brazilian action—they are irrelevant to it.

15 **Second**, Disney does not satisfy the *Unterweser* factors, and, even if it did, the  
16 profound impact of an antisuit injunction on comity is intolerable. The Brazilian  
17 case—which concerns only the enforcement of Brazilian patent claims for Disney's  
18 infringement in Brazil—is not threatening this Court's jurisdiction, nor is it vexatious.  
19 Because patents are territorial rights, this Court lacks power to adjudicate Brazilian  
20 patents in Brazilian proceedings. Disney's request that this Court interfere with the  
21 sovereign application of another country's patent laws is both contrary to U.S. law  
22 under *Voda v. Cordis*, 476 F.3d 887 (Fed. Cir. 2007), and a violation of the Brazilian  
23 Constitution of 1988.

24 **Finally**, even if injunctive relief were available, Disney has not come close to  
25 meeting any of the *Winter/eBay* factors for an injunction, which the Supreme Court  
26 also requires for preliminary injunctions. Disney is not likely to succeed on the merits  
27 and its alleged harm is purely speculative, not irreparable.

28 Because Disney asks for extraordinary relief unsupported by the law and facts,

its motion should be denied.

## II. FACTUAL BACKGROUND

### A. InterDigital Has Only Asserted Non-Essential Encoding Patent Claims Against Disney in the U.S., Europe, Germany, and Brazil.

InterDigital first approached Disney about its infringement of InterDigital's patents in July 2022. Since then, Disney has continued to engage in the unauthorized use of InterDigital's patents.

On February 2 and 3, 2025, InterDigital initiated infringement proceedings against Disney in the U.S., Brazil, Germany, and before the European Unified Patent Court ("UPC") under the patent laws of each jurisdiction. Although Disney asks this Court to issue an antisuit injunction as to the Brazilian action, it makes no similar request regarding either the German or UPC actions.

In the Brazilian action, InterDigital asserted two patents: PI 0305519-1 and PI 0318825-6. These patents include only video encoding claims:

Patent	Asserted Claim Language
PI 0305519-1	Claim 8: Method for <b>encoding</b> video data for a image block, the method being characterized by the fact that it comprises the steps of:
PI 0318825-6	Claim 1: Method (700) of <b>encoding</b> video signal data for an image block,

As shown above in yellow, each of the asserted patent claims in Brazil relates only to video encoding.<sup>1</sup> Ex. 1 (Brazilian Complaint) at 24-25. None of the patent

<sup>1</sup> Encoding refers to compressing a video into an efficient bitstream, usually for transmission, whereas decoding refers to decompressing a bitstream for viewing.



claims asserted against Disney in this case, or in any of the foreign proceedings, cover video decoding. Ex. 2 (Aboim *et al.* Decl.) ¶¶ 3-4; *see also* Plaintiffs’ Motion to Dismiss (“MTD”), Dkt. 54-1 at 9 (describing how all claims at-issue here relate only to video encoding).

**B. The H.264 and H.265 Standards Only Standardize Decoding.**

The International Telecommunications Union (“ITU”) is a standard setting organization headquartered in Geneva, Switzerland. Ex. 3 (Levin Decl.) ¶ 8. The ITU’s longstanding objective is to create global telecommunications standards that help “ensure [the] compatibility of technologies and systems on a worldwide basis.” Ex. 4 (2012 Guidelines) at 146.

In May 2003, the ITU approved Recommendation H.264, which is an international video decoding standard. Ex. 5 (H.264 Recommendation) at 157. In April 2013, the ITU approved Recommendation H.265, the successor to the H.264 standard. Ex. 3 (Levin Decl.) ¶ 12. The H.264 and the H.265 standards are specifications that define technical requirements for video decoders and the video decoding process. Ex. 6 (Richardson Decl.) ¶ 18. In Brazil, Disney and its experts all agree that these standards only specify and define non-standardized decoding functionality. Ex. 7 (Disney Answer to Brazilian Complaint) at 222; Ex. 11 (Novo Decl.) at 793 (Disney’s Brazilian expert agreeing); Ex. 10 (Bermudez Decl.) at 683 (same). Neither the H.264 standard nor the H.265 standard sets forth any technical requirements for video encoders or the video encoding process. Ex. 6 (Richardson Decl.) ¶ 20.

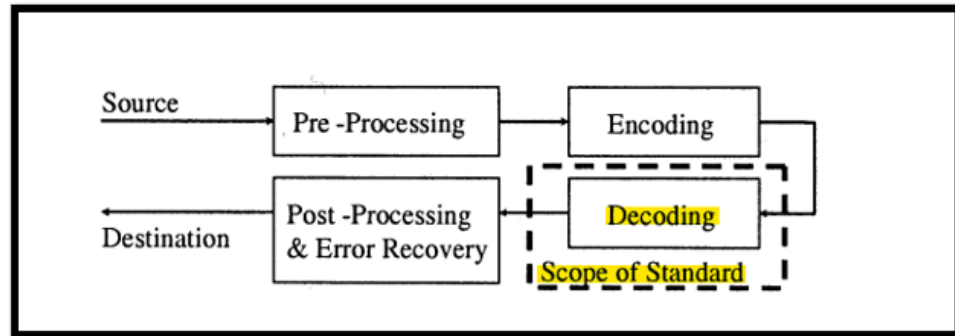
The ITU published specification documents confirming the scope of these standards. Ex. 5 (H.264 Recommendation); Ex. 12 (H.265 Recommendation). Recommendation H.265 defines the term “encoding process” as “[a] process *not*

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specified in this Specification[.]”<sup>2</sup> Ex. 12 (H.265 Recommendation) at 902 (emphasis added).

A 2003 publication authored by the co-chairs of the standardization group that developed the H.264 standard confirms that only decoding is within the “scope of the standard”:



Thomas Wiegand et al., *Overview of the H.264/AVC Video Coding Standards*, Vol. 13, No. 7 (July 2003), available at: [http://ip.hhi.de/imagecom\\_G1/assets/pdfs/csvt\\_overview\\_0305.pdf](http://ip.hhi.de/imagecom_G1/assets/pdfs/csvt_overview_0305.pdf) (emphasis added); see also Ex. 6 (Richardson Decl.) ¶ 24. The paper also explains that “only the central decoder is standardized” to afford implementers “*maximal freedom* to optimize [encoder] implementations” for “specific applications . . .” See *id.*; see also MTD at 8.

### C. The ITU Commitment to License Essential Decoder Claims

#### 1. ITU Patent Declaration Form

The ITU developed its Common Patent Policy in 1998. To do so, the ITU selected Arthur Levin as one of nine people selected to develop the policy. Ex. 3 (Levin Decl.) ¶ 13. Mr. Levin was employed with the ITU for more than eighteen years and is deeply knowledgeable about the organization’s practices, workings, and decisions. *Id.* ¶¶ 4-7.

<sup>2</sup> The ITU uses the term “Specification” and “Recommendation” interchangeably. Ex. 3 (Levin Decl.) ¶ 9 n.1.

1 The objective of the ITU’s Common Patent Policy is to ensure that patent  
2 claims that are *actually* “essential” to the standards are available to license on  
3 reasonable and non-discriminatory (“RAND”) terms. Ex. 4 (2012 Guidelines) at 146.  
4 The ITU achieves this objective by requiring that any member who submits a proposal  
5 for technology for inclusion in a standard must also submit a Patent Declaration form  
6 that commits to license on RAND terms any patent claims that *may be* essential to that  
7 standard. *Id.* at 149; Ex. 3 (Levin Decl.) ¶ 16.

8 The ITU Patent Declaration form makes clear that any RAND licensing  
9 commitment provided on the form only applies to *essential* patent claims—*i.e.*, just  
10 because a patent is declared does not mean that it contains actually *essential* claims.  
11 Ex. 4 (2012 Guidelines) at 149. Nor does it mean that all claims of the declared patent  
12 are actually *essential*. *Id.* For instance, the licensing declaration language on the  
13 second page of the form refers to “Patent,” which is defined at the bottom of the page  
14 as “*those claims* contained in and identified by patents . . . *solely to the extent that*  
15 *any such claims are essential to the implementation of the same above document.*”  
16 *Id.* (emphasis added). Moreover, box 2, which is the licensing option relevant here,  
17 serves as a commitment that “[t]he Patent Holder is prepared to grant a license to an  
18 unrestricted number of applicants on a worldwide, non-discriminatory basis and on  
19 reasonable terms and conditions *to make, use and sell implementations of the above*  
20 *document.*” *Id.* (emphasis added); Ex. 13 (Thomson 2012 ITU Declaration) at 909;  
21 Ex. 14 (Thomson 2014 ITU Declaration) at 941; Ex. 15 (InterDigital 2020 ITU  
22 Declaration) at 945; *see also* MTD at 6 n.8.

23 The ITU’s Patent Declaration form confirms that any licensing commitment  
24 provided by a patent holder only applies to actually *essential-in-fact* patent claims and  
25 does not cover any claims (even if declared) that are not required for implementation  
26 of a standard. Ex. 4 (2012 Guidelines) at 149; Ex. 3 (Levin Decl.) ¶¶ 23-27. This is  
27 consistent with the objective of the Common Patent Policy as the ITU is interested in  
28 seeking licensing commitments only for those patent claims that are actually essential

1 to implement its published Recommendations, such as H.264 and H.265. Ex. 3 (Levin  
2 Decl.) ¶ 27; Ex. 4 (2012 Guidelines) at 146, 149. Shortly after approval of the H.265  
3 standard, the ITU released a publication confirming that just because a patent is listed  
4 on a Patent Declaration form, that patent (or claims thereof) may not be essential to  
5 the published standard. Ex. 3 (Levin Decl.) ¶ 35.

6 2. Thomson’s Patent Declaration Forms

7 Disney contends that the Patent Declaration forms submitted by InterDigital’s  
8 predecessor (Thomson<sup>3</sup>) serve as evidence that the Brazilian patent claims are RAND-  
9 encumbered (notwithstanding Disney’s contrary admissions in Brazil)—going so far  
10 as to imply that the mere act of declaring a patent establishes that its claims are in fact  
11 *essential* and subject to a RAND commitment. *See, e.g.*, Dkt. 50-1 (Mot.) at 7-9; *see*  
12 *also* Exs. 13, 14 (Thomson Patent Declarations). However, Disney’s assertions in  
13 Brazil directly contradict its representations to this Court: there, Disney and its experts  
14 all agree that merely listing a patent on a Patent Declaration form does not establish  
15 that its claims are in fact *essential*. Ex. 7 (Disney Brazil Answer) at 260 (agreeing that  
16 “simply because a patent has been declared essential to a standard does not mean that  
17 a party necessarily uses the patent or that the patent is, in fact, essential”); *id.* at 202-  
18 03 (same). The language on the face of Thomson’s declarations confirms, however,  
19 that its RAND commitment applies only to those patent claims that are shown to be  
20 *essential* to implement the H.264 and H.265 standards. Ex. 13 at 909; Ex. 14 at 941  
21 (Thomson Patent Declarations) (declaring it would “grant a license to an unrestricted  
22 number of applicants on a worldwide, non-discriminatory basis and on reasonable  
23 terms and conditions *to make, use and sell implementations of [Recommendation*  
24 *H.264/H.265].*”) (emphasis added).

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28 <sup>3</sup> InterDigital acquired the Brazilian patents from Thomson Licensing, a subsidiary of  
Technicolor, as part of a larger acquisition of Technicolor’s licensing and research and  
development programs.

3. Disney Admits Encoder Claims are not Essential to the H.264 and H.265 Standards.

In Brazil, Disney expressly admits that encoder claims (*i.e.*, the only claims at issue in this case and in the Brazilian case) are *not* essential and are *not* subject to any RAND commitment. As Disney explains: “the H.264 and H.265 standards refer to DECODING, *not encoding*. This means that the standards *do not require the use of any specific encoding method*, and video encoders have the flexibility to implement different encoding methods.” Ex. 7 (Disney Brazil Answer) at 222 (emphasis added; capitalization in original); Ex. 10 (Bermudez Decl.) at 683 (Disney’s expert admitting “there are no standards for the encoding process”); Ex. 11 (Novo Decl.) at 793; *see, e.g.*, Ex. 9 (Zatt Decl.) at 566 (Disney’s expert admitting “[t]he encoder adopted by Disney+ generates *bitstreams* compatible with the H.264/AVC standard”).

Disney’s expert Dr. Novo is explicit that encoders are not covered by the H.264/H.265 standards: “[H.264 and H.265] exclusively define the decoding process, without establishing guidelines or requirements for the encoding process. . . [T]here is no mandatory standardization for the encoding stage within the ITU-T H.264 and ITU-T H.265 specifications.” Ex. 11 (Novo Decl.) at 793. These admissions undermine Disney’s position before this Court that RAND obligations somehow attach to encoder claims even though the standards only cover decoder claims.<sup>4</sup>

**III. ANTISUIT INJUNCTIONS ARE EXTRAORDINARY AND SHOULD BE USED SPARINGLY.**

Preliminary injunctions are extraordinary remedies. Even more extraordinary are antisuit injunctions which, for at least two reasons, must be “used sparingly.” *See, e.g., Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 881 (9th Cir. 2012); *BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea’s Def. Acquisition Program Admin.*, 884 F.3d 463, 479 (4th Cir. 2018). First, parallel proceedings in different jurisdictions are

<sup>4</sup> Disney also argues that the Brazilian patents are not infringed and are *not* essential (and are not subject to a RAND commitment). Ex. 7 (Disney Brazil Answer) at 222.

1 common, and the default rule allows them. *BAE*, 884 F.3d at 480. Second, an antisuit  
2 injunction “effectively restrict[s] the foreign court’s ability to exercise its  
3 jurisdiction.” *Laker Airways Ltd. v. Sabena*, 731 F.2d 909, 927 (D.C. Cir. 1984).  
4 “Thus, only in the most compelling circumstances does a court have discretion to  
5 issue an antisuit injunction.” *Id.* Given the serious risk that granting a request for an  
6 antisuit injunction will interfere with foreign sovereignty and violate basic principles  
7 of comity, Disney bears a heavy burden to prove its entitlement to injunctive relief.

8        Though circuit courts are split on the proper test for foreign antisuit  
9 injunctions,<sup>5</sup> courts in the Ninth Circuit look to whether “the parties and the issues are  
10 the same in both the domestic and foreign actions,” and whether “the first action is  
11 dispositive of the action to be enjoined.” *Microsoft*, 696 F.3d at 881. Determining  
12 whether the domestic action is “dispositive” of the foreign action requires, at  
13 minimum, a “tentative assessment of the merits” of the claims. *Id.* at 884. If the  
14 movant cannot meet both threshold requirements, the analysis ends and the antisuit  
15 injunction is denied.

16        If both threshold requirements are met, the court then considers the  
17 “*Unterweser* factors,” which originate from the Fifth Circuit. *Id.* The *Unterweser*  
18 factors examine whether allowing the foreign case to proceed in parallel with the  
19 domestic action would: “(1) frustrate a policy of the forum issuing the injunction;  
20 (2) be vexatious or oppressive; (3) threaten the issuing court’s in rem or quasi in rem  
21 jurisdiction; or (4) cause prejudice or offend other equitable principles.” *MWK*  
22 *Recruiting Inc. v. Jowers*, 833 F. App’x 560, 562 (5th Cir. 2020) (citing *In re*  
23 *Unterweser Reederei, GmbH*, 428 F.2d 888, 890 (5th Cir. 1970) (*rev’d on other*  
24 *grounds*)); *see also Microsoft*, 696 F.3d at 882 (reciting same factors). If the movant  
25 does not satisfy at least one *Unterweser* factor, the analysis is over and the injunction  
26 is denied.

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<sup>5</sup> *See BAE*, 884 F.3d at 479.

1 If the threshold requirements are met, and the *Unterweser* factors weigh in  
2 favor of foreign-interference injunctive relief, the court then considers whether the  
3 injunction’s “impact on comity is tolerable.” *Id.* If the movant cannot show that it is,  
4 then no injunction issues.

5 In addition to all of these factors, to prevail on its requested preliminary  
6 injunction, Disney must also meet the traditional *Winter/eBay* factors: “that he is  
7 likely to succeed on the merits, that he is likely to suffer irreparable harm in the  
8 absence of preliminary relief, that the balance of equities tips in his favor, and that an  
9 injunction is in the public interest.” *See, e.g., Winter v. NRDC*, 555 U.S. 7, 20 (2008)  
10 (reversing the Court of Appeals for the Ninth Circuit and removing the preliminary  
11 injunction against the Navy’s training exercises because the movant could not satisfy  
12 the traditional injunction factors); *see also eBay Inc. v. MercExchange, L.L.C.*, 547  
13 U.S. 388, 391 (2006) (applying the same injunction factors in patent cases according  
14 to the “well-established principles of equity”).

#### 15 **IV. ARGUMENT**

##### 16 **A. Disney’s Breach of RAND Counterclaim Itself is Defective and** 17 **Therefore Cannot Support a Preliminary Injunction.**

18 Disney asserts that an antisuit injunction is required so the Court can “resolve[]  
19 Defendants’ breach of RAND licensing claims in this action.” Mot. at 14. However,  
20 Disney’s breach of RAND counterclaim should be dismissed because: (1) Disney did  
21 not and cannot allege that any of the asserted encoder claims at-issue are “essential”  
22 under the ITU Common Patent Policy because the policy covers only decoder claims,  
23 so no RAND commitment attaches; and (2) Disney did not allege it makes a product  
24 implementing either the H.264 or H.265 standards. *See* MTD at 3-4. If Disney’s  
25 RAND-based counterclaims are dismissed, the Court can deny Disney’s requested  
26 antisuit injunction as moot. *See, e.g., Santa Monica Nativity Scenes Comm. v. City of*  
27 *Santa Monica*, 784 F.3d 1286, 1291 n.1 (9th Cir. 2015) (declining to assess merits of  
28 preliminary injunction because dismissal under Rule 12(b)(6) was proper).



**B. Because the Patent Claims in Brazil Are Not RAND-Encumbered as Disney Admits, Disney Cannot Satisfy The Threshold Requirement That This Case Be “Dispositive” of The Brazilian Case.**

The Brazilian action concerns Brazilian patent claims that *Disney admits are not essential and are not RAND-encumbered* under the ITU Common Patent Policy. Disney has therefore conceded that RAND is not an issue in Brazil, so any RAND ruling in this case (if Disney’s counterclaims are not dismissed) is irrelevant in Brazil. Even if Disney’s pleadings *in this case* alleged some colorable RAND-based counterclaim sufficient to survive a motion to dismiss (they do not), Disney has admitted that the patent claims at-issue in the *Brazilian action* are not essential and are not subject to any RAND commitment. Absent essential and RAND-committed patent claims *in Brazil*, any breach of RAND claim that survives the motion to dismiss before this Court has no bearing in Brazil.

1. Only actually “essential” patent claims can be RAND-encumbered.

By completing the ITU Licensing Declaration Form, a patent owner voluntarily enters a contract with the ITU for claims in declared patents that are also shown to be actually “essential.” Like any contract, the scope of the obligations is limited to the contract’s express terms.

For the ITU, a patent owner’s declaration that it will be prepared to grant licenses on RAND terms and conditions applies to “those *claims* contained in and identified by patents . . . solely to the extent that any such *claims* are *essential* to the implementation of a Recommendation | Deliverable.” Ex. 4 (2012 Guidelines) at 149 (emphasis added). Claims of a patent are subject to the ITU’s contractual RAND commitment, but “*solely to the extent* that any such claims *are essential*.” *Id.* (emphasis added).

Disney emphasizes that InterDigital declared to the ITU that the Brazilian patents *may* contain one or more claims essential to the specified standard. *See* Mot. at 8-9. But merely listing the Brazilian Patents on a Patent Declaration form does not



1 alter the scope of the ITU’s well-established contractual RAND commitment. Ex. 14  
2 (Thomson 2014 ITU Declaration) at 942; Ex. 3 (Levin Decl.) ¶¶ 32-34. Before the  
3 Brazilian Court, Disney admits that declaring a patent to the ITU *does not* establish  
4 that any claims in that patent are actually “essential.” See Ex. 7 (Disney Brazil  
5 Answer) at 260, 202-03 (“[S]imply because a patent has been declared essential to a  
6 standard does not mean that a party necessarily uses the patent or that the patent is, in  
7 fact, essential[.]”).

8           2. Patent claims covering video *encoding* are not “essential.”

9           Whether a patent claim is essential is defined by the ITU Patent Policy. An  
10 essential patent claim is one “that would be *required* to implement a specific  
11 Recommendation | Deliverable.” Ex. 4 (2012 Guidelines) at 149 (emphasis added). If  
12 the patent claim is proven to be *actually necessary* for implementing a portion of the  
13 video standards, it is “essential” under the ITU Patent Policy. See *id.* But, if the  
14 standard does not require the use of an invention covered by a patent claim, that claim  
15 is not and cannot be “essential” or RAND-encumbered.

16           Video decoding is defined and required by the H.264 and H.265 standards;  
17 video encoding is explicitly *carved out and is not required* by these standards. The  
18 H.265 standard defines “encoding process” as “[a] process *not specified* in this  
19 Specification that produces a bitstream conforming to this Specification.” Ex. 12 at  
20 902 (emphasis added). In fact, references to an encoding process in the standard are  
21 merely “informative,” which is “[a] term used to refer a content provided in this  
22 Specification that *does not establish any mandatory requirements* for conformance to  
23 this Specification and thus *is not considered an integral part* of this Specification.”  
24 Ex. 12 at 902 (emphasis added). The standard is clear—it does not mandate or  
25 otherwise establish required operation for video encoding. Ex. 6 (Richardson Decl.) ¶¶  
26 20-25. Excluding encoding from the scope of the standards was an intentional choice  
27 by the creators of the standard to preserve maximum flexibility for implementing non-  
28 standardized encoders. See *supra* Section II.

On this point, Disney takes the opposite position here from its clearly stated position in Brazil. There, Disney admits that encoding is not covered by the H.264 or H.2654 standards: “the H.264 and H.265 standards refer to DECODING, *not encoding*. This means that *the standards do not require the use of any specific encoding method . . .*” Ex. 7 (Disney Brazil Answer) at 222 (emphasis added, capitalization in original). Disney’s experts agree that encoding claims are not essential: “[H.264 and H.265] exclusively define the decoding process, without establishing guidelines or requirements for the encoding process. . . . [T]here is no mandatory standardization for the encoding stage within the ITU-T H.264 and ITU-T H.265 specifications.” Ex. 11 (Novo Decl.) at 793 (emphasis added); Ex. 10 (Bermudez Decl.) at 683 (Disney’s expert admitting “there are no standards for the encoding process”); *see, e.g.*, Ex. 9 (Zatt Decl.) at 556 (Disney’s expert admitting that Disney only creates bitstreams compatible with the standards but offering no opinion that the encoding process is standardized).

3. RAND issues are not relevant to encoding claims.

Because the standards do not require the use of any specific encoding method, encoding patent claims cannot be essential. That means they cannot be subject to any contractual RAND obligation.

That encoding patent claims are neither essential nor RAND-encumbered was recently confirmed by the U.S. International Trade Commission—a forum familiar with deciding F/RAND-related disputes. *See* MTD at 13. There, the ALJ held that because the H.264 Standard does not specify an encoding process, “RAND issues . . . are not relevant to encoding claims.” *Certain Video Capable Electronic Devices*, Inv. No. 337-TA-1379, at \*102 (Jan. 29, 2025) (Initial Determination). In that ITC case, like here, both parties’ experts admitted that the H.264 standard does not impose a RAND obligation on encoding claims. *See* MTD at 13 (quoting ITC experts’ testimony).

Disney relies heavily on *Microsoft* to argue that the threshold “dispositive”

1 factor is met here. But *Microsoft* supports InterDigital, not Disney.

2 In *Microsoft*, the Ninth Circuit concluded that a court must make an  
3 “assessment of the merits of the contract dispute” to determine whether the domestic  
4 contract claim was dispositive of the foreign patent infringement actions. 696 F.3d at  
5 883. There (and unlike here), both parties agreed that the RAND commitment applied  
6 to the patent claims in the German litigation and that Microsoft could enforce that  
7 commitment as a third-party beneficiary. *Id.* at 884. Because of the agreement that  
8 RAND was at-issue both domestically *and* in the foreign case, the *Microsoft* court  
9 held that the district court did not abuse its discretion in finding that the U.S. contract  
10 action was dispositive of the German patent action. *Id.* at 884-85.

11 But the Ninth Circuit went on to explain what might happen under a different  
12 fact pattern—like the one here. The Ninth Circuit concluded that if “the district court’s  
13 interpretation of the RAND commitment as a contract enforceable by Microsoft was  
14 fundamentally legally erroneous, ***then we would have to conclude that it was an***  
15 ***abuse of discretion*** for the district court to rule that the U.S. contract action might  
16 dispose of the German patent action.” *Id.* at 884. Unlike *Microsoft*, where the parties  
17 agreed that the patents in Germany were RAND-encumbered, InterDigital and Disney  
18 agree here that ***no*** essential patents are at-issue in Brazil because no RAND  
19 commitment applies to encoding claims. Because no RAND commitment applies to  
20 the patent claims in the Brazilian action, there is no contractual commitment that is  
21 enforceable by Disney in relation to the Brazilian action. *See also Apple Inc. v.*  
22 *Qualcomm Inc.*, No. 3:17-cv-00108-GPC-MDD, 2017 WL 3966944, at \*11 (S.D. Cal.  
23 Sept. 7, 2017) (declining to issue antisuit injunction and noting that “Qualcomm has  
24 failed to adequately explain how this Court’s adjudication of Qualcomm’s global  
25 contractual FRAND commitment to ETSI would moot Apple’s foreign patent  
26 claims”).

27 *Lenovo*, which relied on *Microsoft*, is in accord—the Federal Circuit assumed  
28 without deciding that the cellular patents at-issue were subject to a FRAND

1 commitment (under a different standard and patent policy promulgated by the  
2 European Telecommunications Standards Institute). It then remanded the denial of an  
3 antisuit injunction to the lower court for further analysis. *Telefonaktiebolaget LM*  
4 *Ericsson v. Lenovo (United States), Inc.*, 120 F.4th 864, 868 n.5 (Fed. Cir. 2024).  
5 Despite months passing after remand, Lenovo never re-urged its motion for an antisuit  
6 injunction and the case settled without further action at the district court.

7 Because there is no agreement that the claims at-issue both here and in Brazil  
8 are RAND-encumbered (as was the case in both *Microsoft* and *Lenovo*), this Court  
9 would need to independently determine that the claims at-issue in Brazil—which  
10 Disney admits are not essential—are nonetheless RAND-encumbered notwithstanding  
11 Disney’s contrary assertion. This is a claim-by-claim infringement-like analysis that  
12 that a U.S. Court should not ordinarily undertake with respect to foreign patents.  
13 *Voda*, 476 F.3d at 901-02 (holding that the district court abused its discretion in  
14 exercising supplemental jurisdiction over foreign patent issues).

15 **C. None of The *Unterweser* Factors Weighs in Favor of Disney’s**  
16 **Request.**

17 1. The Brazilian action does not frustrate U.S. policy or threaten this  
18 Court’s jurisdiction.

19 The Brazilian action concerns infringement of Brazilian patent claims based on  
20 Disney’s acts of infringement within Brazil. Allowing the Brazilian case to continue  
21 in parallel—as it has been doing—does not frustrate U.S. policy or threaten this  
22 Court’s jurisdiction.<sup>6</sup>

23 It is a reach for Disney to argue that the U.S. has a “policy against granting  
24 injunctions in cases involving SEPs when the patent holder refuses to offer a license  
25 on RAND terms.” Mot. at 17. Like Disney’s other arguments, this one is based on its  
26

27 \_\_\_\_\_  
28 <sup>6</sup> Disney implicitly concedes that allowing the German and UPC cases—that it does  
not seek to enjoin—to proceed in parallel and possibly result in injunctive relief does  
not frustrate a policy of the U.S. or threaten this Court’s jurisdiction.

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factually erroneous premise that the claims in Brazil are RAND-encumbered—they are not (as Disney has admitted, and as InterDigital disputes). Even if they were RAND-encumbered, Disney’s argument fails because it recognizes that InterDigital made “a comprehensive economic offer to Disney” on August 23, 2024. Dkt. 50-16 at 6. But Disney presents no evidence about whether the “comprehensive economic offer” was RAND or not. And Disney tacitly admits that InterDigital could seek injunctive relief if its “comprehensive economic offer” was RAND. *See* Mot. at 18 (claiming the RAND commitment prevents InterDigital from seeking “an injunction *if it did not first offer RAND terms*”). So even *if* Disney could establish that the Asserted Claims of the Asserted Patents at-issue here were RAND-encumbered (and it cannot), and even *if* there was a policy in the U.S. that injunctions should not issue before a RAND offer is given, Disney has not met its burden of showing this supposed policy is being frustrated.

Disney also has not shown that it has been deprived of a fair opportunity to present its defenses in Brazil, that Brazilian courts are incapable of answering these questions, or that Brazilian courts would substitute their own judgment on these questions for that of another court. In fact, Disney asked the Brazilian Court to decide the issue of infringement of the Brazilian patents *before* the Brazilian Court addresses any RAND claim there. *See* Ex. 7 (Disney Brazil Answer) at 180-81. Nor does Disney articulate how the U.S. has some greater policy interest in interpreting the ITU contract compared to the Brazilian courts.<sup>7</sup> U.S. courts are not the sole global arbiter of ITU RAND obligations.

2. The Brazilian action is not vexatious or oppressive.

Nothing about the Brazilian action is vexatious or oppressive. Vexatious or oppressive litigations are “without reasonable or probable cause or excuse; harassing; annoying.” *Microsoft*, 696 F.2d at 886. Examples of “vexatious or oppressive”

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<sup>7</sup> The ITU Common Patent Policy does not specify a choice of law.

proceedings are orders that directly attack the U.S. court’s authority. *See, e.g., Quaaak v. Klynveld Peat*, 361 F.3d 11 (1st Cir. 2004) (issuing antisuit injunction because Belgium court issued order prohibiting local companies from providing discovery).

The Brazilian action concerns the enforcement of Brazilian patent rights under Brazilian law and procedure of the only country who can adjudicate those rights: Brazil. This Court cannot adjudicate those Brazilian patents, nor will the action before this Court dispose of the Brazilian proceedings. InterDigital filed its Brazilian case on February 3, 2025, before Disney asserted its RAND-based counterclaims in this Court on March 30, 2025. *Compare Microsoft*, 696 F.2d at 886 (examining the district court’s conclusion that the German action was vexatious since it was brought to “interfere with the [U.S.] court’s ability to decide the contractual questions already properly before it”), *with Qualcomm*, 2017 WL 3966944, at \*12 (concluding Apple’s foreign litigation was not vexatious because they were brought “before the parties’ pleadings [in the U.S. action] were finalized and before this Court ever made a ruling on the merits”), and *MWK Recruiting Inc.*, 833 F. App’x at 564 (explaining that, under this *Unterweser* factor, a parallel proceeding is not vexatious or duplicitous simply because it shares “underlying operative facts”—it must “involve the same or similar legal bases” or “identical claims”).

3. Allowing the Brazilian action to proceed in parallel does not offend equitable principles.

Disney claims that allowing the Brazilian action to proceed undisturbed could threaten its profits and business interests in Brazil. Even assuming this is true, it does not move the needle. Disney has no right in equity or otherwise to profit from continued patent infringement. Disney is defending itself in Brazil according to Brazilian law (*e.g.*, by denying infringement), and no injunctive remedy has issued. Ex. 2 (Aboim *et al.* Decl.) ¶ 12. There is no pretextual motive here: InterDigital is lawfully enforcing its foreign patent rights in accordance with Brazilian law. *See Qualcomm*, 2017 WL 3966944, at \*14 (finding equities weighed against antisuit



1 injunction where Apple “has legitimate reasons for pursuing parallel actions,”  
2 including to “vindicat[e] its rights under foreign anticompetition and patent law”). The  
3 law is clear: “[e]quity does not demand that a court enjoin a non-identical parallel  
4 proceeding simply because it is burdensome to defend oneself.” *Qualcomm*, 2017 WL  
5 3966944, at \*15.

6 4. The impact of Disney’s requested antisuit injunction on  
7 international comity is intolerable.

8 Even if the *Unterweser* factors weighed in favor of Disney (they do not),  
9 Disney’s requested relief intolerably offends international comity. The Brazilian  
10 action concerns only Disney’s infringement of *Brazilian* patents *in Brazil*. It is black-  
11 letter law that a “patent right is limited by the metes and bounds of the jurisdictional  
12 territory that granted the right to exclude.” *Voda*, 476 F.3d at 901-02; *see also id.*  
13 (explaining that it is plainly “incongruent to allow the sovereign power of one to be  
14 infringed or limited by another sovereign’s extension of its jurisdiction”).

15 Disney’s request also violates the Brazilian Constitution of 1988 because it  
16 impedes access to the Brazilian court and the remedies it can provide under Brazilian  
17 law. Ex. 2 (Aboim *et al.* Decl.) ¶¶ 19-20. The Brazilian Code of Civil Procedure  
18 establishes that civil jurisdiction shall be governed by Brazilian procedural norms in  
19 accordance with the provisions of the Code (article 16). *Id.* ¶ 18. The same statute  
20 provides that it is the responsibility of the Brazilian judicial authority to process and  
21 judge actions in which the basis is a fact or acts occurred in Brazil (article 21, item  
22 III). *Id.* It further provides that an action filed before a foreign court neither constitutes  
23 a duplicate litigation nor prevents the Brazilian judicial authority from hearing the  
24 same cause of action, except for contrary provisions in international treaties and  
25 bilateral agreements in force in Brazil. *Id.*

26 Unsurprisingly, Brazilian Courts have also held that decisions issued in foreign  
27  
28

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1 courts do not bind the outcome of the lawsuit in Brazil.<sup>8</sup> *Id.* ¶ 21. In a Brazilian  
2 decision issued in 2024, in the context of an injunction entered in a standard essential  
3 patent case, a Court held that “[r]egarding the action before the British Court, any  
4 proceedings there do not prevent the continuation of this case, as it is a Foreign Court,  
5 which does not exclude the jurisdiction of the Brazilian Justice to decide on violations  
6 that occurred on Brazilian territory.”<sup>9</sup> *Id.*

7 Disney gives little more than lip service to the notion of comity by pointing to  
8 *Microsoft*, but the caselaw has evolved. Since that 2012 decision, numerous courts  
9 faced with antisuit injunctions in F/RAND related cases have held that they *are* a  
10 direct attack on their jurisdiction. Ex. 19 at 1076 (issuing an anti-interference  
11 injunction because “it is totally impermissible for a Court in one sovereign jurisdiction  
12 to injunct the party before it from pursuing its cause against infringement of its  
13 intellectual property before another sovereign jurisdiction, where such latter  
14 jurisdiction is the only forum competent to adjudicate the claim of infringement”); Ex.  
15 20 at 1122 (issuing an anti-interference injunction and explaining that “an ASI issued  
16 by a foreign court cannot be recognized in Germany due to a violation of public  
17 policy”); Ex. 16 at 962 (French court finding that the prospective antisuit injunction  
18 requested from a U.S. court “constitutes an interference in the jurisdiction of the  
19 courts and has the effect of indirectly disregarding the exclusive jurisdiction  
20 recognized for each state to freely define the international jurisdictional competence  
21 of their courts”); Ex. 17 at 974-76 (the UK court followed suit). This confirms that  
22 foreign courts view these injunctions as an affront to comity.

23 Courts in the U.S. share this view. When faced with a foreign interference  
24 injunction from a court in China that prevented Ericsson from seeking injunctive relief  
25

26  
27 <sup>8</sup> Similarly, “German courts are not bound by, and will make their own determination  
regarding any potential FRAND/RAND arguments.” Ex. 18 (Schumacher Decl.) ¶ 4.

28 <sup>9</sup> InterDigital filed a request in Brazil for the Brazilian court to issue an anti-  
interference injunction against Disney to prevent Disney from interfering with  
InterDigital’s right to have the Brazilian court adjudicate the Brazilian patent issues.

on its patents in the U.S., the District Court in the Eastern District of Texas acted quickly to issue an anti-interference injunction, concluding that the Chinese injunction was “frustrat[ing] this Court’s compelling interest in ensuring that litigation within its legitimate jurisdiction proceed in this forum.” *Ericsson Inc. v. Samsung Elecs. Co., Ltd.*, No. 2:20-CV-00380-JRG, 2021 WL 89980, at \*5 (E.D. Tex. Jan. 11, 2021). The court “insist[ed] that it be permitted to adjudicate the issues raised here pursuant to its own legitimate jurisdiction and without interference.” *Id.* at \*6. Just like foreign courts, U.S. courts targeted by antisuit injunctions are quick to defend their jurisdiction from international attack—as they well should because the antisuit relief Disney seeks is condemned worldwide as a violation of international comity.

**D. Disney Has Done Nothing to Show It Meets the *Winter/eBay* Factors for an Injunction to Issue—Nor Can It.**

As the party seeking a preliminary injunction, Disney must show it is likely to succeed in proving: (1) a RAND commitment applies to the patent claims; (2) Disney is a third-party beneficiary who can enforce that RAND commitment; (3) InterDigital breached that RAND commitment as to Disney; and (4) that breach of the RAND commitment precludes injunctive relief in the Brazilian action. Disney has not done so with respect to any of these elements.<sup>10</sup> Disney cites a letter noting that InterDigital made “a comprehensive economic offer to Disney” on August 23, 2024. Dkt. 50-16 at 6. But it proffers no evidence about whether the “comprehensive economic offer” was RAND, so Disney cannot meet its burden of showing it is likely to succeed in

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<sup>10</sup> The Supreme Court in *eBay* stated: “[a]ccording to well-established principles of equity,” a party seeking injunctive relief “*must* satisfy [the traditional] four-factor test before a court may grant such relief.” 547 U.S. at 391. This applies in patent cases, *id.*, as well as to preliminary injunctive relief. *See, e.g., Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 990 (9th Cir. 2011). Disney acknowledges that it must satisfy the traditional four-factor preliminary injunction test. Mot. at 14-15. Since *eBay*, at least one district court concluded that the traditional test for injunctive relief must be met in the context of a (domestic) antisuit injunction. *See Finisar Corp. v. Cheetah Omni, LLC*, No. 11-CV-15625, 2012 WL 12931575, at \*3 (E.D. Mich. Nov. 19, 2012). The Ninth Circuit also noted that there must be some assessment of the merits of the underlying claims on which the injunction is based. *Microsoft*, 696 F.3d at 884.

1 showing the offer violated RAND.

2 Disney suggests it does not have to show InterDigital *breached* a RAND  
3 commitment to show that it is likely to succeed on the merits, just that a RAND  
4 commitment *exists*. That is wrong. Disney points to nothing in the ITU Common  
5 Patent Policy to support its assertion, and courts considering other F/RAND  
6 commitments have concluded that injunctions may be available even where the  
7 essential patent holder complied with F/RAND. *See, e.g., Lenovo*, 120 F.4th at 877  
8 (explaining that F/RAND commitments “do[] not categorically bar such injunctions”  
9 and injunctions on essential patents are available where the F/RAND commitment was  
10 satisfied); *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1331-33, 1342 (Fed. Cir. 2014)  
11 (same).

12 None of the other preliminary injunction factors weighs in favor of Disney  
13 either. Disney does not show the loss of profits and business it fears are “sufficiently  
14 imminent to meet the requirements for irreparable harm.” *See Federated Indians of*  
15 *Graton Rancheria v. Haaland*, No. 24-cv-08582, 2025 WL 271276, at \*7 (N.D. Cal.  
16 Jan. 10, 2025). Disney just posits it might be harmed “as soon as” a few months from  
17 now, and only *if* it loses on the merits in Brazil, and the injunction it fears “threaten[s]  
18 a shutdown of Disney+” in Brazil actually issues (and is that draconian). Mot. at 19.  
19 Disney is predicting it will lose the Brazilian case and relying entirely on a conclusory  
20 declaration to claim speculative future harm.<sup>11</sup> This does not establish imminent  
21 irreparable harm: it posits only speculative harm. Nor has Disney shown that the  
22 Brazilian legal system is incapable of accounting for any of the speculative risks it  
23 raises with tools like a bond.

24 Additionally, the balance of equities and the public interest do not favor Disney.  
25 It is neither equitable nor in the public interest to interfere in foreign parallel  
26

27 <sup>11</sup> If the Court is inclined to hold a hearing before denying Disney’s motion,  
28 InterDigital will file a notice of request to cross-examine Disney’s declarants under  
Local Rule 7-8 to show there is no irreparable harm and that Disney is not likely to  
succeed on the merits of their argument.

proceedings—Disney has articulated no such interest—and such interference offends comity. Doing so will only erode national patent rights and weaken U.S. patent rights if U.S. courts become the target of similar antisuit injunctions.

**V. CONCLUSION**

Disney asks this Court to interfere with proceedings in Brazil involving Brazilian patents and Brazilian remedies. There is no basis for this kind of overreach into Brazil’s sovereignty or ability to administer its own court system. Nor can Disney show it is entitled to injunctive relief under traditional factors like likelihood of success on the merits or irreparable harm. The Court should deny Disney’s motion.

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 6,918 words, which complies with the word limit of L.R. 11-6.1.

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